BEFORE THE COLORADO LIMITED GAMING CONTROL COMMISSION

STATE OF COLORADO

Case No. DC 92004

DECLARATORY ORDER

IN THE MATTER OF THE PETITION FOR DECLARATORY ORDER OF:

FIRST CHOICE COIN COMPANY,

Petitioner.

This matter comes before the Colorado Limited Gaming Control Commission ("Commission") pursuant to the Petition for Hearing filed by the Petitioner with the Division of Gaming on August 19, 1992, pursuant to Regulations 47.1-208 and 47.1-601 of the Colorado Gaming Regulations.

On August 25, 1992 during a regularly scheduled public meeting the Commission discussed how the members of the Commission wished to address the petition. Because the petition is addressed at an ongoing background investigation, the Commission conducted its review of the issues raised during an executive session. The Commission concluded that it would treat the Petition for Hearing as a petition for declaratory order pursuant to Regulation 47.1-601.

The Commission reviewed the status of the pending application. The Commission approved the Director's actions and authorized the Division to continue the background investigation required by the application of the First Choice Coin Company until all outstanding issues are resolved and until the Division's investigation is complete.

To the extent that additional issues are raised in the petition and are not expressly answered by this Declaratory

Order, they are hereby dismissed.

IT IS SO ORDERED.

Dated this 10 day of September 1992, NUNC PRO TUNC August 25, 1992.

BY THE COLORADO LIMITED
GAMING CONTROL COMMISSION:

Aurel Kelly

AUREL KELLY
Chairperson

AG Alpha No. GA AD FBKIB
AG File No. CLS9203631.CL

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Dept. of Revenue
Gaming Division

STATE OF COLORADO, COLORADO LIMITED

GAMING CONTROL COMMISSION

PETITION FOR HEARING

Pursuant to the provisions of Regulation 47.1-208 and alternatively, Regulation 47.1-601, Colorado Gaming Regulations, First Choice Coin Company, (the "Company") a Colorado corporation, 5972 N. Broadway, Denver, Colorado 80216, through their attorneys Fisher Law Offices, respectfully petitions the Colorado Limited Gaming Control Commission (the "Commission") for a hearing in an adjudicatory proceeding or, alternatively, a declaratory order. In support of the petition, the Company states:

1. The state statue, regulation, rule, order, decision, or determination in question is: Rule 2, Powers and Duties of Commission and Director. Specifically, the Company's petition requests the Commission's interpretation of the investigative powers of the Director of the Colorado Division of Gaming (the "Director") and the procedure for issuance of licenses for limited gaming activities as well as an order of the Commission compelling the Colorado Division of Gaming (the "Division") to issue its order, along with written reasons, if any, with respect to the limited gaming application of the Company pursuant to Regulation 47.1-317, Colorado Gaming Regulations.

2. The facts and circumstances which give rise to the issue to be addressed and answered by the Commission are:

   a. The Company submitted its Colorado Gaming Application to the Division on or about July 3, 1991. The Company's application was for a slot machine manufacturer or distributor's license as that particular license is defined in Colo. Rev. Stat. 12-47.1-501. The Company complied with all the applicable statutory and regulatory requirements in completing and filing their application.

   b. At the time the Company submitted its application, the Company provided the Division a ten thousand dollar ($10,000.00) deposit to cover the Division's anticipated investigation costs. The Company has submitted an additional two thousand five hundred dollars ($2,500.00) to the Division to cover investigative costs incurred by the Division since July 8, 1992. Throughout the total time the Company has been investigated, the Division has never requested further or additional deposits from the Company to cover investigative costs. The Company has only received two statements from the Division about costs, draws by the Division on the deposits and their deposit balance. As a result of the Division's failure to provide monthly statements as required by Regulation 47.1-305, the Company has had to monitor the balance in their investigative account on their own.

c. After receipt of the Company's application, the Division contracted with the Colorado Bureau of Investigation (the "Bureau") to conduct the background investigations of the Company's Officers and Directors. The Company's Officers, Directors and sole Shareholders are Dennis Tessmer, Mark Singer and L.L. Singer.

d. On information and belief, the Bureau conducted its investigation from the time the investigation file was delivered to the Bureau until approximately late 1991 or early 1992. At this time the Bureau returned the investigative file to the Division. Upon information and belief, the Bureau's investigation was complete and the Company's application required only the action of the Director prior to being submitted to the Commission.

e. On or about April 1, 1992, Mr. Tessmer met with the Assistant Director, Mr. Mel Grantham and the Deputy Chief of Investigations, Mr. Jim Cain. At the meeting, several options were discussed, including severing Mr. Tessmer from the Company, to facilitate the Company's approval for a gaming license. The Company decided to proceed with the gaming application as originally submitted. This decision was conveyed to the Division by letter dated April 8, 1992.

f. On information and belief, the Division caused the Company's investigative file to be returned to the Bureau on or about April 8, 1992.

g. On May 8, 1992, in a conversation with undersigned counsel, the Bureau's investigator, Mike Chapla, indicated that his portion of the investigation of the Company and its principals was completed.

h. On information and belief, the Director also caused the investigation of the Company to be interrupted several times from the inception of the investigation until May 8, 1992, while investigative personnel were assigned or detailed to other gaming applicants. On information and belief these interruptions delayed the investigations of the Company by several months.

i. Following completion of the Bureau's investigations, and despite the fact that Mr. Chapla had indicated the Bureau's investigation was completed by returning the investigative file to the Division, on information and belief, the Director requested additional investigation by the Division with respect to the same issues and areas of concern that were previously investigated by the Bureau over the preceding eleven (11) months.

j. On information and belief, the Director failed to assign an investigator from the Division to conduct the requested supplemental investigation until approximately Friday, June 29, 1992. This failure to assign an investigator resulted in an another six (6) week delay in the investigation process despite the Company's efforts to provoke some response from the Division. On or about June 29, 1992, the Director finally designated Mr. Vic Freeburg as the investigator who would complete the investigation of the Company.

k. On information and belief, following his assigning Mr. Freeburg to the Company's investigation, the Director intended to cause Mr. Freeburg to be pulled from the supplemental investigation of the Company and assigned to another investigation, again delaying the supplemental investigation of the Company and, ultimately, the Company's consideration for a gaming license for an additional six to eight weeks.

l. On July 9, 1992, the Director allowed the Company, through its undersigned counsel, to appear before the Commission to informally request that the investigation be expedited. While no formal action was taken by the Commission, the Company states, on information and belief, that the Director, at the direction of the Commission, caused Mr. Freeburg to be assigned to complete his investigation of the Company, to the exclusion of other investigative requirements.

m. From approximately July 10, 1992 through August 12, 1992, Mr. Freeburg, on information and belief, conducted his investigation of the same "areas of concern" as was investigated by Mr. Chapla four (4) months prior. On information and belief, Mr. Freeburg presented the results of his investigation to the Director, through the Assistant Director, Mr. Mel Grantham, on or about August 13, 1992.

n. On information and belief, the Director, through the Assistant Director, Mr. Grantham, again directed Mr. Freeburg to continue his investigation into the "areas of concern" that have already been investigated by the Bureau and the Division over the past fourteen (14) months.

o. The investigation process on the Company and its principals authorized by statute and regulation has continued on and off, through no fault of the Company, for approximately fourteen (14) months. On information and belief, this is approximately three (3) times the average period the Division and the Bureau have taken to investigate other gaming license applicants.

p. On information and belief, the Company's application is older than any other application in the Division's investigative file.

q. On information and belief, the investigations conducted by the Bureau and the Division over the past fourteen (14) months have not produced any facts that would substantiate a recommendation of denial from the Division pursuant to Regulation 47.1-317, Colorado Gaming Regulations.

r. The Director refuses to state any fact-based reason for denial of a gaming license to the Company. The Director also refuses to allow the Company's application to proceed to the Commission until, as stated by Mr. Grantham, the investigation is completed.

s. The Director, by his latest action, has again denied the Company an opportunity to have its application heard by the Commission. The Director's actions in requesting, at least, a third investigation of matters already investigated by the Bureau and the Division has irreparably damaged the relationship between the Company and it's suppliers as well as the overall business reputation of the Company and its principals.

3. The precise issues to be answered by the Commission are:

a. Whether the Director is authorized, by statute or regulation, to order continued investigation of an applicant beyond the scope of an investigation already conducted and completed by the Bureau or the Division; and

b. Whether the Colorado Gaming Regulations imply any limits of "reasonableness" upon the discretionary power of the Director under Regulations 47.1-306 to order examination of applicants.

Argument

The Company seeks a determination of the issues stated above in an attempt to resolve a perceived stalemate between the Company and the Division. It is the Company's position that the Division has taken too much time to complete its investigation despite having had nearly fourteen (14) months to do so. Furthermore, the Company believes the Director has abused his discretion in ordering repeated investigations of issues and concerns that have been adequately investigated and/or explained over the past year.

The Company understands the need for the Division and the Director to conduct a thorough investigation. The Company also does not dispute the right of the Director to require additional investigation prior to making a recommendation to the Commission. However, the Company believes that the Commission did not intend to give the Director carte blanche authority to investigate an applicant until the situation became economically impossible for an applicant to "finish" the investigation process.

This is exactly what has occurred to the Company. Through 14 months of investigation, the Company has lost millions of dollars of sales, incurred substantial damage to its reputation and, finally, lost the opportunity that it had to be the exclusive distributor for a specific brand of gaming devices in Colorado. The Division and the Director have repeatedly urged the Company to withdraw its application but have not produced a single piece of information that would lead the Company or its Principals to believe that a withdrawal of the application was warranted. Lacking a fact-based reason to recommend that the Company be denied a gaming license or even inferential information sufficient to warrant consideration of a voluntary withdrawal of the application by the Company, the Director has simply continued to keep the Company in a "permanent investigation" status. The Company believes the Director, for reasons unknown to the Company, will continue this investigation until the Company is forced to withdraw their application.

It is the action of the Director, in ordering yet another investigation of the same information, that has resulted in this petition. The Company respectfully requests that the Director examine the thrice completed investigation file and make a recommendation to the Commission on the Company's application. If the Director recommends denial, the Company requests, under Regulation 47.1-317, Colorado Gaming Regulations, a written reason upon which the recommendation is based. It is the Company's position that any such denial must be based on facts, not unsubstantiated hearsay or the Director's purported "discomfort" with the investigation. Fourteen months should provide the Division and the Director with an adequate and reasonable opportunity to uncover a reason for denial, if one exists. The unfettered discretionary power to investigate at will and forever needs to be balanced against a reasonable standard of how long and at what costs such investigations can continue without some intervention by the Commission.

DATED this 19th day of August, 1992.

Respectfully submitted,

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